App. F. IX-4

Previous References
Legis 15-24-1

1937.
(Legis)

File No. 17-37
Serial Nos. 1065

Letter References
Mung 229-37 (1-2).

PRESERVED

11

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for January 1939

SUBJECT.

Question of amending Ch III of the Religious & Charitable Institutions Act

Deferred — for reasons given by Hon G. A.

WD 0295—GPB—22,500—18-8-37

6104
P 836
1

General and Revenue Secretariat Legis File No. of 1937. [App. F. III—2

Serial No.

1) There is some doubt about Chap III of the Religious & Charitable Endowts Regn being applicable to Muzrai Institutions. The heading of the chapter wd seem to make it inapplicable but the provisions are sometimes required for Muzrai Institutions. It seems desirable to make the position clear and amend the Regn if nec. Will Asst Secy Law kindly examine the matter & put up a note.

Secy
24-4-37.

2) Please put up the file relating to passing of the Religious and Charitable Institutions Regulation.

BKR
24-4-37

3) Legis file No 15 & 24 Serial 1 is put up.

1/5

4) A consideration of the Scheme of Regulation VII of 1927, shows that Separate chapters are devoted to different kinds of Institutions. Chapter II relates to the Control and management of Muzrai Institutions Chapter III relates to public, religious and charitable institutions other than Muzrai institutions; Chapter IV deals with Mathas

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

2

1014

File No. of 193 . | General and Revenue Secretariat

Serial No.

to those similar institutions and Chapter V relates to Pujaris and other Servants of hereditary Servants of Muzrai Institutions. It looks to me that the Sections of the Repealing have been grouped under different headings with a set purpose. In the Statement of objects and Reasons introducing the Bill, it was said that opportunity was taken to deal in Separate Chapters, with the provisions applicable to Muzrai and other religious and Charitable Institutions respectively, which were not, till then, clearly marked.

5) It was at one time supposed that Courts of Law would not recognise the division into parts or the headings as substantive parts of an Act. But they are gradually winning recognition as a kind of preamble to the enactments which they precede, limiting or explaining their operation. These various headings are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments.

Serial No.

they constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a Statute may be looked to explain its enactments, but as affording a better key to the Construction of the sections which follow them than might be afforded by a mere preamble (See Craies on Statute Law. 3rd Edn. Pages 186-187).

6) I may, however, point out that in a case reported recently (52 Mys. H.C.R. 135) there are some observations by the learned Chief Justice to indicate that some of the provisions in Chapter III might be applicable to Mujrai Institutions also. Speaking about Section 19, he observes "Apart from the heading of that Chapter, it happens that the language used in Section 19 (1) which I have read is wide enough to include property belonging to Mujrai Institutions, as well as property belonging to other religious and Charitable Institutions" With very great respect, I beg to state that this observation does not seem to be correct. This will be clear from a perusal of Sub-Section (2) which says that when the property belonging to a

A

WD 0417—GPB—30,000—8-9-36

religious or charitable institution is taken possession of by Government under sub-section (1), it shall be subject to the same incidents as property belonging to a Muzrai institution so long as it continues to be in possession of Government. From this it can be seen that the religious and charitable institutions referred to in sub-section (1) must necessarily be institutions other than Muzrai institutions. The expression 'religious or charitable institution' used in both the sub-sections must necessarily have the same meaning.

7) Coming to question of some of the provisions in Chapter III being required for use in respect of Muzrai institutions, I might observe that regarding the alienation of Inam land granted by Government to any Muzrai institution, provision is already made in sections 9 and 10, empowering the Government to deal with such alienations. But some difficulty may be experienced in respect of alienations of other properties (properties other than inam lands)

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

belonging to Muzrai Institutions. Though the controlling authority in respect of all Muzrai Institutions Vests in Government, as provided in Section 3, it looks to me that in respect of other alienations of other properties, the remedy of Government lies by way of Suits, and that Summary procedure prescribed in Sections 18 and 19 is not available. I think that this defect can be cured by a suitable amendment of Section 9 (1) so as to make its provisions applicable not only to Inam lands, but also to all other properties belonging to the Muzrai Institutions

BSKR
4.6.37

GENERAL SECRETARY.
4 JUNE 1937
2811

General Secretary)

8) Please also consider G.O. No. 1667 dated 23rd July 1937. Rev 23/7/37

9) Forwarded, with compliments, to Government Advocate, for favour of advice

Rev 63/37-38 dy 23.7.37

BSD.
BS Ramakrishnaya
Dy Gen. Secy
23.7.37

Returned with compliments.

10) The distinction between Muzrai Institution and Non-

NOTE—Contn. Sheet.

WD 0417--GPB—30,000—5-9-36

6'041

Serial No.

Non-Muzrai Institution is rather thin in the Regulation and I had occasion to point out the necessity for exercising the powers under section 18 in respect of a Muzrai Institution even though the section comes in - Chapter III whose heading excludes Muzrai Institutions. vide: my note dated the 5th January 1937, paras 23 to 28 in Muz. File No. 276 of 1936/Sls. 1 to 5. The learned Chief Justice in some other connection had to advert to the same matter as noticed by the Assistant Secretary (Law) when he refers to 42, Mysore High Court Reports, page 135, published in the March Part of the current year (it is mentioned in the file as 52 Mys.H.C.R. which is evidently a clerical mistake for 42). But, I regret I cannot agree with the remark of the Assistant Secretary that the observation of the learned Chief Justice is not correct. If one could or need say so, it is absolutely correct and entitled to the highest respect and the language of the section does not admit of any doubt in the matter. So, we have two instances where two sections 18 and 19 of Chapter III were held applicable to Muzrai Institutions even though the title of the - Chapter excepts that class of institutions from its - purview. The suggestion of the Assistant Secretary, to widen the scope of section 9 in Chapter II, so as to make applicable the summary power vested in the Government under section 18 of Chapter III to Muzrai Institutions emphasizes also the need for applying provisions of - Chapter III to them.

11) On page 14 of the Legis. File 15 of 24/Sl. 1, sent along with the papers under advertance, Chapter III

was

Serial No.

was headed as "Religious and Charitable Institutions which are not Muzrai". The last four words were struck off in red ink and the word "other" in the same ink was written before the word "Religious". The heading then read as "Other Religious and Charitable Institutions". This was the first draft. Page 49 of the same file is in a different ink from the rest of this draft. The formation of the letters in type of that page is also different from what precedes and what follows it. The spelling of the word "public" as "publice" is also noticeable. The heading of Chapter III in this page is the same as in the printed copy of the Regulation. There has been no note anywhere to show how this change came about and whether this change received the particular attention of anybody, if so, of whom.

(12) I perused the reported proceedings of the Legislative Council and of the Select Committee published in the Gazette in connection with this Regulation. The only portion where some light is thrown on the question at issue is to be found on page 76 of the Proceedings of the Legislative Council, of the December Session in 1926. There, some of the Members of the house remarked in not very complimentary terms about the way the Bill was drafted. The Local and Legislative Secretary happened to remark that sub-clause (2) of the Bill was 'superfluous'. The Muzrai Commissioner, Mr. C. S. Balasundaram Iyer as he then was, was pleased to remark that it was 'redundant' and not

WD 03594—GPB—30,000—18-7-35

'not good drafting'. He reiterated this remark again observing that "there is no doubt about that and that it did not redound to the credit of drafting". Ultimately sub-clause (2) was deleted on the ground that Religious and Charitable Institutions would also be Muzrai Institutions because under the definition of a Muzrai Institution, a Religious and Charitable Institution will become a Muzrai Institution when it comes under the Management of Government. This only illustrates what is stated above namely, that the line of demarcation between a Muzrai Institution and a Religious and Charitable Institution is not very clear cut.

13) In these circumstances, the point is whether it is absolutely necessary to go to the Legislative Council and observe all the formalities of a full fledged legislative measure involving not merely this amendment but also possibly some further consequential changes.

14) The Assistant Secretary, Law, opines that the heading of a Chapter is like a preamble. It is so held in some cases. In some other cases it has been put on the same level as that of a marginal note, especially when these headings in the chapters were not put to the vote of the house as the clauses are. For Indian examples where heading was ignored, A.I.R. 1920 All. 787 at 789; 1925 Mad. 609 at 612; 1926 All. 312; 1931 All. 597 and I.L.R. 21 Mad. 293 may kindly be referred to. An example of a case on the borderland is A.I.R. 1933 Bom.51. In this case (ie Regn.) I do not find that the headings were put to the vote of the house

15) Supposing an order is passed by a Muzrai Officer or the Government exercising the powers under Chapter III

with

6/6/4/36 9

Re: amendment of Religious and Charitable Endowments Regulation

General and Revenue Secretariat | File No. H Legis | of 193 . | [App. F. III—2

Serial No.

with reference to a Muzrai Institution which is taken out of its purview, still I think it may not be questioned by a Civil Court, since in respect of Muzrai Institutions, the Chief Controlling Authority is the Government whose orders must necessarily be final. The orders of the Government cannot be questioned by a private party as ~~the~~ "cancellation of an order of the Government or by a Government Officer at the instance of a party affected by it is a very exceptional remedy" vide. 42 Mysore High Court Reports, 135 at 143.

16) Therefore, I believe there may not be much chance of a vigorous canvassing in a Civil Court of the applicability of the head note to the exercise of the powers under the various sections of Chapter III to Muzrai Institutions.

17) In these circumstances, may I take the liberty of suggesting that the question of amendment may kindly be deferred till the High Court should make a definite pronouncement in the matter on any future occasion so as to affect adversely the powers of the Government in this behalf.

Mortenlakshmi Narasu ppa
Government Advocate.

H/24.8.37.

GENERAL SECRETARY. 25 AUG. 1937 Pap

GENERAL SECRETARY. 26 AUG. 1937 Rec'd

18) Reference para 8.

19) Gen. Secy) Weimas talk over this sometime
BKR 26-8-37
Rec'd 14/9.
BKR 14.9

20) Submitted.
20/9

NOTE—Contn Sheet.

WD 03594—GPB—30,000—18-7-35

10 Amendment of Religious and charitable Institutions Regn 6104/36 P1

Legis

File No. of 193 General and Revenue Secretariat

For perusal.

1) In a file relating to Muzzi institutions it was stated that the question of the applicability of Chap III of the Relig Ch. Inst Regn to them wd be got examined.

2) The asst Govt Law thinks that the chapter does not apply. The Govt advocate thinks it does. The question wd be whether the regulation may not be amended to make the position clear. The Govt advocate thinks that this may not be necessary now and that if a decision of the High Court should affect the powers of Govt adversely the question of such amendment may be taken up.

3) The question may in the circumstance be allowed to lie over. Till any decision to the contrary is pronounced the chapter will be taken as applying when necessary not only to other than Muzzi institutions but to them. institutions also.

Jud 7/12 ADR 7.12

Joint Member

OFFICE OF FIRST MEMBER C
DEC 7 19[illegible]
No. 3201

Durgah Regulation Amendment

General and Revenue Secretariat (Legislative Branch) File No. 1-1 of 1937. [App. F. III—2

Serial No.

M Please put up 42 Mys H C Reports L 133 –

SJ 9/12 WO 9/12

The Volume is put up. The decision is flagged H.

POKR 10.12.37

(1st Member).

No further action is necessary now.

Para 6 A. I agree with the Govt advocate's view on the

SJ 30/12 WO 3/1/38

DKR 3.1.38

OFFICE OF THE FIRST MEMBER OF COUNCIL
DEC 10 1937
No. 3355

File Register and B 8-1-38

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-9-37